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The "Lex Bratt"
(The Law of Industrial Espionage)

When I was on trial in 1971-1973 for revealing the Pentagon Papers, my lawyers discovered -- to my own surprise -- that nothing I had done, in disclosing government classified documents stamped "Top Secret," had violated existing U.S. laws. This seemed to contradict both common sense and what I had been told explicitly when I was a government official. But "common sense" was misleading in this case, and what I had been told was false.

What legal research disclosed was that our First Amendment to the Constitution, which forbids Congress from passing any law abridging freedom of speech or freedom of the press, had always been understood by the government as barring the enactment of an Official Secrets Act such as exists in England -- or would exist for corporations in Sweden, under the "Lex Bratt." Thus there was no U.S. law which would apply criminal penalties simply for the unauthorized publication of any piece of information that an official had stamped secret.

The Executive branch had, and still has, of course, a "classification system" whose rules I had indeed violated; but there is no legislative basis for it, and therefore no criminal sanctions behind it, no valid threat of prison. It is an administrative system only, such as exists in corporations, unions, churches, and every bureaucratic organization that controls "internal" information. Indeed, virtually every human association has customs and practices of discretion and privacy, a line between "inside" and "outside," protected by social sanctions that are highly effective without being legislated.

Despite the fact of my prosecution, which amounted to a

desperate and unsuccessful experiment by the Nixon Administration, the legal reality in the U.S. was that a government employee could only be admonished, demoted, or fired for giving information classified "secret" to an unauthorized person, but not (except in the case of espionage, defined as secretly passing information on the national defense to an agent of a foreign power with intent to give advantage to that power or to harm the interests of one's own country) properly subjected to trial, conviction or prison for doing so. Thus, what we found was that the Executive Branch of the U.S. Government did not have the power to apply criminal sanctions to the control of information, whereas the "Lex Bratt" would confer this upon private corporations in Sweden. Under the Lex Bratt, another Ingvar Bratt would be in greater jeopardy of going to prison for exposing illegal corporate actions in Sweden than I was in the U.S. for publishing Top Secret government war plans.

Ours is, no doubt, a privileged situation in the world. Yet I have come to see it not as a historical relic or national peculiarity or luxury, but as a right to which every citizen of every country should aspire. The basic presumption of our First Amendment is the right of a sovereign public to unhampered publication and discussion, above all of matters of state, war and peace, life and death. This is, I believe, a right worth struggling and dying for, not only in 1776 but all the more in the nuclear era.

The basic problem of the Twentieth Century is the abuse of authority by states, protected by secrecy. In the second half of the century, such abuses have come to threaten the continuance of human life. If we are to survive, we humans must come to expand democratic control of foreign policy far beyond what now exists in the most liberal of states.

Secrecy, even excessive secrecy, can never be eliminated so long as there is bureaucracy; but there can be more or less, and it

is urgently necessary that there be less, much less. The Lex Bratt goes in the wrong direction, toward still more secrecy rather than less. As the Nixon Administration sought to do in my case, and as a recent U.S. district court decision in the Morison case threatens to do, it adds the threat of criminal prosecution and of prison to existing administrative and social sanctions that are already more than enough to preserve what may be a fatal number of shameful secrets of states and corporations, whether relating to secret wars or to secret arms sales, pollution and waste disposal.

Even if it were modified to exclude an Ingvar Bratt who reveals crimes to the press (which would take drastic rewriting of the proposed law), the Lex Bratt would still -- by its obsessive focus on the supposed urgency of "protecting secrets" -- serve to sustain and strengthen an illegitimate and dangerous status quo of secret-keeping, when radical de-legitimation and reduction of secrecy is needed.

The Lex Bratt draft should be replaced by its opposite, a law that would not seek to intimidate but to encourage and protect those who would follow the example of Ingvar Bratt, those who would cease to be silent -- in the interests of their career, their boss, their teammates -- about things they know to be wrong and harmful to other human beings.